

## HOUSE BILL NO. 547

INTRODUCED BY B. DAVIES, ADAMS, BRUEGGEMAN, KASTEN, PATTISON, WALTERS

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE FETAL PROTECTION ACT; CREATING CRIMINAL OFFENSES INVOLVING DEATH OR INJURY TO AN UNBORN CHILD; DEFINING "UNBORN CHILD"; PROVIDING PENALTIES; ~~EXEMPTING LEGAL ABORTIONS AND USUAL AND CUSTOMARY STANDARDS OF MEDICAL PRACTICE~~ MAKING CERTAIN EXCEPTIONS; AND AMENDING SECTION 41-1-103, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Short title.** [Sections 1 through 10] may be cited as the "Fetal Protection Act".

NEW SECTION. **Section 2. Definitions.** As used in [sections 1 through 10], "unborn child" means a human fetus that is conceived and is more than 12 weeks old but is not yet born.

NEW SECTION. **Section 3. Deliberate homicide of unborn child.** (1) A person commits the offense of deliberate homicide of an unborn child if:

(a) the person purposely or knowingly causes the death of an unborn child; or

(b) the person attempts to commit, commits, or is legally accountable for the attempt or commission of any offense listed in 45-5-102(1)(b) or any other forcible felony and in the course of the forcible felony or flight after committing a forcible felony, the person or any person legally accountable for the crime causes the death of an unborn child.

(2) A person convicted of the offense of deliberate homicide of an unborn child shall be punished by life imprisonment or by imprisonment in a state prison for a term of not less than 10 years or more than 100 years, except as provided in 46-18-219 and 46-18-222.

NEW SECTION. **Section 4. Mitigated deliberate homicide of unborn child.** (1) A person commits the offense of mitigated deliberate homicide of an unborn child when the person purposely or knowingly

1 causes the death of an unborn child but does so under the influence of extreme mental or emotional stress  
2 for which there is a reasonable explanation or excuse. The reasonableness of the explanation or excuse  
3 must be determined from the viewpoint of a reasonable person in the actor's situation.

4 (2) It is an affirmative defense that the defendant acted under the influence of extreme mental or  
5 emotional stress as provided in subsection (1). This defense constitutes a mitigating circumstance reducing  
6 deliberate homicide of an unborn child to mitigated deliberate homicide of an unborn child and must be  
7 proved by the defendant by a preponderance of the evidence.

8 (3) Mitigated deliberate homicide of an unborn child is not an included offense of deliberate  
9 homicide of an unborn child as described in [section 3(1)(b)].

10 (4) A person convicted of mitigated deliberate homicide of an unborn child shall be imprisoned in  
11 a state prison for a term of not less than 2 years or more than 40 years and may be fined an amount not  
12 more than \$50,000, except as provided in 46-18-219 and 46-18-222.

13

14 NEW SECTION. **Section 5. Negligent homicide of unborn child.** (1) A person, OTHER THAN THE  
15 MOTHER, commits the offense of negligent homicide of an unborn child if the person negligently causes the  
16 death of an unborn child.

17 (2) Negligent homicide of an unborn child is not an included offense of deliberate homicide of an  
18 unborn child as described in [section 3(1)(b)] or mitigated deliberate homicide of an unborn child as  
19 described in [section 4].

20 (3) A person convicted of negligent homicide of an unborn child shall be fined an amount not to  
21 exceed \$50,000, or be imprisoned in the state prison for a term not to exceed 20 years, or both.

22

23 NEW SECTION. **Section 6. Assault on unborn child.** (1) A person commits the offense of assault  
24 on an unborn child if the person inflicts substantial bodily harm upon the unborn child, who is subsequently  
25 born alive, by purposely or knowingly making physical contact of an insulting or provoking nature with a  
26 pregnant woman without the woman's consent.

27 (2) As used in this section, "substantial bodily harm" includes but is not limited to the birth of an  
28 unborn child prior to 37 weeks gestation if the child weighs 2,500 grams or less at the time of birth.  
29 Substantial bodily harm does not include the inducement of the unborn child's birth when done for bona  
30 fide medical purposes.

(3) A person convicted of assault on an unborn child shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

**NEW SECTION. Section 7. Aggravated assault on unborn child.** (1) A person commits the offense of aggravated assault on an unborn child if the person inflicts serious bodily harm upon the unborn child, who is subsequently born alive, by purposely or knowingly making physical contact of an insulting or provoking nature with a pregnant woman without the woman's consent.

(2) A person convicted of aggravated assault on an unborn child shall be imprisoned in the state prison for a term of not less than 2 years or more than 20 years and may be fined an amount not more than \$50,000, except as provided in 46-18-219 and 46-18-222.

**NEW SECTION. Section 8. Intimidation involving unborn child.** (1) A person commits the offense of intimidation involving an unborn child when:

(a) the person commits any act with the intent to cause fear in a pregnant woman of immediate bodily harm to the woman or with the intent to cause fear in a pregnant woman of the death of the woman's unborn child; or

(b) purposely or knowingly inflicts or attempts to inflict bodily harm on an unborn child that is subsequently born alive.

(2) A person convicted of the offense of intimidation involving an unborn child shall be fined an amount not to exceed \$500 or be imprisoned in the county jail for a term not to exceed 6 months, or both.

**NEW SECTION. Section 9. Harm to unborn child -- exceptions.** [Sections 1 through 10] do not apply to:

(1) acts that cause the death of an unborn child if those acts were committed during a legal abortion to which the pregnant woman consented; ~~or~~

(2) acts that are committed pursuant to usual and customary standards of medical practice during diagnostic testing or therapeutic treatment; ~~or~~

(3) ACTS INVOLVING THE MOTHER TAKING PRESCRIPTION OR NONPRESCRIPTION MEDICATION OR ILLICIT DRUGS;  
OR

(4) ACTS COMMITTED BY THE PREGNANT WOMAN.

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2        NEW SECTION. **Section 10. Other convictions not barred.** A prosecution for or conviction under  
3 [sections 1 through 10] is not a bar to conviction of or punishment for any other crime committed by the  
4 defendant as part of the same conduct.

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6        **Section 11.** Section 41-1-103, MCA, is amended to read:

7        **"41-1-103. Unborn children.** ~~A~~ Except as provided in [sections 1 through 10], a child conceived  
8 but not yet born is ~~to be deemed~~ considered an existing person, so far as may be necessary for its  
9 interests in the event of its subsequent birth."

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11        NEW SECTION. **Section 12. Severability.** If a part of [this act] is invalid, all valid parts that are  
12 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its  
13 applications, the part remains in effect in all valid applications that are severable from the invalid  
14 applications.

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